

and 20-22.

REMARKS

Claims 1-17 and 20-22 are rejected under 35 U.S.C. § 112 first paragraph as not being enabled by the specification. In particular, the Examiner indicates that one skilled in the art would be unable to understand how a multilayer laminate having a bonded and a non-bonded layer would secure a container. Applicants direct the Examiner's attention to the specification, for example, at page 17, lines 3-17; page 17, line 20-25; page 18, lines 1-2; page 18, lines 12-14; and page 19, lines 25-30. The specification provides enablement for a closure having two peelably attached layers, each having a bonded edge and a non-bonded edge, for example, on page 17, lines 3-17:

Fig. 3 illustrates a cross sectional view of the closure. Closure 30 has first layer 31 and second layer 32 peelably attached at a separation interface 33. On the surface of layer 31 and layer 32 is bonded pressure sensitive adhesive 34. The pressure sensitive adhesive covers all but a portion 36 of the surface. This portion is non-bonding to the container. The adhesive is releasably bonded to a silicone release liner 35.

The Examiner has mischaracterized bonded and non-bonded edges. The term "non-bonded" describes a portion of the edge of the layer not covered by pressure sensitive adhesive and therefore not bound to the container or article. It would be readily understood by and apparent to one ordinary skilled in the art that said peelably attached layers have a portion that is at one point bonded and at another point not bonded by adhesive to an adjacent layer. Applicants believe that the specification is enabling by the language provided above as well as by descriptions provided elsewhere and respectfully

request withdrawal of the rejection.

Claims 1-17 and 20-22 are rejected under 35 U.S.C. § 112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. In particular the Examiner states that it is unclear where the bonded and non-bonded edges are in relation to the upper and lower surfaces, or how at least a portion of the non-bonded edges are not secured to an article. As indicated above, Applicants believe that the Examiner has mischaracterized the meaning of non-bonded and direct the Examiner's attention to figure 6 and its accompanying detailed description. The absence of pressure sensitive adhesive 53 at a portion of the upper surface of first polymeric film 51, between flap 56 and second polymeric film 51 in non-bonding zone 55, and between the second polymeric film 52 and the article in non-bonding zone 56 indicates that that portion of the edge of both polymeric films 51 and 52 are not bonded to the article; hence the term "non-bonded." The non-bonded edge portion of the first and second polymeric film surfaces extends for a length beyond the portion of the first and second polymeric film surfaces that are bonded to the article in order to generate a directionally peelable opening feature. This is recited in the claims and is supported by the specification. Claim 1, for example, recites,

...at least one portion of the lower surface of the first layer at the non-bonded edge and at least a portion of the upper surface of the second layer at the non-bonded edge is not attached to the article.

The Examiner further states that it is unclear how the closure is used to secure contents of the article. The first and second polymeric films are secured to each other at the separation interface. The bond between the first and second polymeric films can be

broken by peeling the films apart beginning at the bonded edge of the separation interface. Applicants direct the Examiner's attention to claim 1, for example, which indicates that the "upper surface of the first layer is peelably attached to the lower surface of the second layer at a separation interface." Support for this feature may be found and is taught, for example, in the disclosure at page 9, lines 4-7. Applicants therefore believe that claims 1-17 and 20-22 do not fail for indefiniteness and therefore distinctly claim the subject matter. Withdrawal of this rejection is respectfully requested.

Claims 1, 3-8 and 10-13 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Freedman (U.S. Patent No. 4,925,714). The Examiner contends that the invention is not patentably distinct because the reference teaches a "non-bonded edge extending along the width of each layer." Applicants respectfully disagree with the Examiner's contention because the reference does not teach, disclose or describe a non-bonded edge or a peelable closure. Applicants respectfully direct the Examiner's attention to independent claims 1 and 10 wherein it is a portion of the upper and lower surfaces (not the width or end) of the closure films that are specifically described as being non-bonded to the article. A non-bonded "width" that the Examiner asserts is disclosed by Freedman is unrelated to the non-bonded edge of a portion of the closure films. In fact, a non-bonded edge is altogether absent in Freedman. Furthermore, Freedman provides no motivation to modify a label assembly to form a closure for an article nor does the reference suggest that a directional closure is desirable or achievable. Because the invention is patentably distinct, Applicants respectfully request withdrawal of the non-statutory double patenting rejection of claims 1, 3-8 and 10-13.

Claims 1 and 8 are rejected under 35 U.S.C. § 102(b) as being anticipated by

Freedman (U.S. Patent No. 4,925,714). Applicants assume that the Examiner contends that Freedman teaches a non-bonded edge. Applicants respectfully disagree with the Examiner's contention. Freedman does not teach either (1) a non-bonded edge on the upper or lower surface of a closure layer or (2) a portion of the closure layer not attached to the article. The non-bonded portion of the first and second layer does not refer to the "width" of each layer as the Examiner seems to believe and as distinguished by Applicants above. Applicants disagree that Freedman anticipates the invention and respectfully request withdrawal of the rejection.

Claims 1, 3-8 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Freedman (U.S. Patent No. 4,925,714). The Examiner asserts that general conditions of peel strengths are disclosed by Freedman and that it would have been obvious to select optimum or workable ranges for the invention. Applicants respectfully disagree with the Examiner's assertion. First, claims 3 and 4 recite a peel strength range of 30 - 400 g/1 inch or 2 inch, rather than 30-40 g as indicated by the Examiner. The peel strength range taught by Freedman sets a maximum of 50 N/m, or 130 g/1 inch. The limitations taught by Freedman would therefore discourage the peel strength range recited in the claims whether or not any experimentation was conducted. Second, the Examiner relies on the holding that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 105 U.S.P.Q. 233. Here, Freedman does not disclose the general conditions of a closure. Rather, Freedman is concerned with removing an upper coupon or tag from a lower coupon or tag. The *Aller* court was concerned with the issue of patentability where mere changes in quantities such a temperature or concentration may produce a new and

unexpected result. *Id.* at 236. The peel strength range in claims 3 and 4 is not a modification or exercise in discovering optimum peel strength ranges of Freedman because Freedman neither teaches nor considers peel strength values for directional closure interfaces having a non-bonded edge. Instead Freedman discloses multiple, varied and progressive peel strengths for a film assembly. Therefore a comparison of peel strength ranges between Freedman and the invention would be irrelevant under *Aller* because the invention differs from the reference in "kind" not in merely in "degree" which is the test upon which the *Aller* court based its holding. *Id.* at 237. Because any modification of peel strength ranges taught by Freedman would not lead to a closure containing a portion that is non-bonded and not attached to the article, the invention differs in kind. Any modification in degree, i.e. peel strength ranges, would be insufficient to achieve the invention.

Claims 1, 3-8 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Freedman (U.S. Patent No. 4,925,714). The Examiner asserts that it would have been obvious to one having ordinary skill in the art to make use of known materials in combination with the reference to achieve the invention. The Applicants respectfully disagree with the Examiner's assertion. The decision relied on by the Examiner for the basis of this rejection (*In re Leshin*, 125 U.S.P.Q. 416) holds that obviousness may be found when known materials are applied to previously known articles. Because Freedman does not disclose or suggest the features of the invention, namely a closure for an article wherein the closure has a non-bonded portion and a directional peelable opening, there is no known article upon which generally known polymeric materials may be applied to

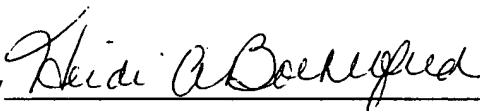
support this obvious-type rejection. Withdrawal of the obviousness rejections to claims 1, 3-8, and 10 is believed to be warranted.

In view of the foregoing remarks, Applicants respectfully request withdrawal of the rejections and allowance of claims 1-17 and 20-22. If any additional fees are required for the filing of these papers, Applicants request the Commissioner to charge those fees to deposit account #18-0988, Docket No. AVERP2514USA.

Respectfully submitted,

RENNER, OTTO, BOISSELLE & SKLAR, LLP

By



Heidi A. Boehlefeld
Reg. No. 34,296

1621 Euclid Avenue
Nineteenth Floor
Cleveland, Ohio 44115
(216) 621-1113